

By Berlonga

B. No 2060

A BILL TO BE ENTITLED

AN ACT

relating to administrative penalties for violation of certain laws,
rules, orders, and permits of the Texas Department of Water
Resources.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 26, Water Code, is amended by adding
Section 26.136 to read as follows:

Sec. 26.136. ADMINISTRATIVE PENALTY. (a) If a person
violates this chapter, a rule adopted under this chapter, or a
term, condition, or provision of a permit or an order issued under
this chapter, the person may be assessed a civil penalty by the
commission.

(b) The penalty may not exceed \$10,000 a day for each
violation. Each day a violation continues may be considered a
separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the commission
shall consider the person's history of previous violations of this
chapter, the seriousness of the violation, any hazard to the health
or safety of the public, and the demonstrated good faith of the
person charged.

(d) A civil penalty under this section may be assessed only
after the person charged with the violation has been given an
opportunity for a public hearing.

(e) If a public hearing has been held, the commission shall

1 make findings of fact, and it shall issue a written decision as to
2 the occurrence of the violation. If the commission determines that
3 a violation has occurred, it shall issue an order that states the
4 amount of the penalty and that requires that the penalty be paid.
5 If appropriate, the commission shall consolidate the hearings with
6 other proceedings under this chapter.

7 (f) If the person charged with the violation fails to avail
8 himself of the opportunity for a public hearing, a civil penalty
9 may be assessed by the commission after it has determined that a
10 violation did occur and the amount of the penalty that is
11 warranted. The commission shall then issue an order that states
12 the amount of the penalty and that requires that the penalty be
13 paid.

14 (g) Within 15 days after the date on which an order is
15 issued under Subsection (e) or (f) of this section, the commission
16 shall send a copy of the order to the person charged. Within 30
17 days after the day on which the copy is sent the person charged
18 with the penalty shall pay the proposed penalty in full or, if the
19 person wishes to contest either the amount of the penalty or the
20 fact of the violation, forward the proposed amount to the
21 commission for placement in an escrow account.

22 (h) If through review of the proposed penalty it is
23 determined that no violation occurred or that the amount of the
24 penalty should be reduced, the commission shall, within the 30-day
25 period immediately following that determination, remit the
26 appropriate amount to the person, with interest at the prevailing
27 United States Department of the Treasury rate.

1 (i) Failure to forward the money to the commission within
2 the time provided by Subsection (g) of this section results in a
3 waiver of all legal rights to contest the violation or the amount
4 of the penalty.

5 (j) Civil penalties owed under this section may be recovered
6 in a civil action brought by the attorney general at the request of
7 the commission.

8 SECTION 2. Chapter 27, Water Code, is amended by adding
9 Section 27.1015 to read as follows:

10 Sec. 27.1015. ADMINISTRATIVE PENALTY. (a) If a person
11 violates the provisions of this chapter under the jurisdiction of
12 the commission, a rule of the department adopted under this
13 chapter, or a term, condition, or provision of a permit or order
14 issued by the commission under this chapter, the person may be
15 assessed a civil penalty by the commission.

16 (b) The penalty may not exceed \$10,000 a day for each
17 violation. Each day a violation continues may be considered a
18 separate violation for purposes of penalty assessments.

19 (c) In determining the amount of the penalty, the commission
20 shall consider the person's history of previous violations of this
21 chapter, the seriousness of the violation, any hazard to the health
22 or safety of the public, and the demonstrated good faith of the
23 person charged.

24 (d) A civil penalty under this section may be assessed only
25 after the person charged with the violation has been given an
26 opportunity for a public hearing.

27 (e) If a public hearing has been held, the commission shall

1 make findings of fact, and it shall issue a written decision as to
2 the occurrence of the violation. If the commission determines that
3 a violation has occurred, it shall issue an order that states the
4 amount of the penalty and that requires that the penalty be paid.
5 If appropriate, the commission shall consolidate the hearings with
6 other proceedings under this chapter.

7 (f) If the person charged with the violation fails to avail
8 himself of the opportunity for a public hearing, a civil penalty
9 may be assessed by the commission after it has determined that a
10 violation did occur and the amount of the penalty that is
11 warranted. The commission shall then issue an order that states
12 the amount of the penalty and that requires that the penalty be
13 paid.

14 (g) Within 15 days after the day on which an order is issued
15 under Subsection (e) or (f) of this section, the commission shall
16 send a copy of the order to the person charged. Within 30 days
17 after the day on which the notice or order is issued, the person
18 charged with the penalty shall pay the proposed penalty in full or,
19 if the person wishes to contest either the amount of the penalty or
20 the fact of the violation, forward the proposed amount to the
21 commission for placement in an escrow account.

22 (h) If through review of the proposed penalty it is
23 determined that no violation occurred or that the amount of the
24 penalty should be reduced, the commission shall, within the 30-day
25 period immediately following that determination, remit the
26 appropriate amount to the person, with interest at the prevailing
27 United States Department of the Treasury rate.

1 (i) Failure to forward the money to the commission within
2 the time provided by Subsection (g) of this section results in a
3 waiver of all legal rights to contest the violation or the amount
4 of the penalty.

5 (j) Civil penalties owed under this section may be recovered
6 in a civil action brought by the attorney general at the request of
7 the commission.

8 SECTION 3. The Solid Waste Disposal Act (Article 4477-7,
9 Vernon's Texas Civil Statutes) is amended by adding Section 8A to
10 read as follows:

11 Sec. 8A. (a) If a person violates the provisions of this
12 Act relating to solid waste under the jurisdiction of the
13 department, a rule of the department adopted under the provisions
14 of this Act relating to solid waste under the jurisdiction of the
15 department, or a term, condition, or provision of a permit or order
16 issued by the commission under this Act, the person may be assessed
17 a civil penalty by the commission.

18 (b) The penalty may not exceed \$10,000 a day for each
19 violation. Each day a violation continues may be considered a
20 separate violation for purposes of penalty assessments.

21 (c) In determining the amount of the penalty, the commission
22 shall consider the person's history of previous violations of this
23 Act, the seriousness of the violation, any hazard to the health or
24 safety of the public, and the demonstrated good faith of the person
25 charged.

26 (d) A civil penalty under this section may be assessed only
27 after the person charged with the violation has been given an

1 opportunity for a public hearing. If a public hearing has been
2 held, the commission shall make findings of fact, and it shall
3 issue a written decision as to the occurrence of the violation. If
4 the commission determines that a violation has occurred, it shall
5 issue an order that states the amount of the penalty and that
6 requires that the penalty be paid. If appropriate, the commission
7 shall consolidate the hearings with other proceedings under this
8 Act. If the person charged with the violation fails to avail
9 himself of the opportunity for a public hearing, a civil penalty
10 may be assessed by the commission after it has determined that a
11 violation did occur and the amount of the penalty that is
12 warranted. The commission shall then issue an order that states
13 the amount of the penalty and that requires that the penalty be
14 paid.

15 (e) Within 15 days after the day on which an order is issued
16 under Subsection (d) of this section, the commission shall send a
17 copy of the order to the person charged. Within 30 days after the
18 day on which the notice or order is issued, the person charged with
19 the penalty shall pay the proposed penalty in full or, if the
20 person wishes to contest either the amount of the penalty or the
21 fact of the violation, forward the proposed amount to the
22 commission for placement in an escrow account.

23 (f) If through review of the proposed penalty it is
24 determined that no violation occurred or that the amount of the
25 penalty should be reduced, the commission shall, within the 30-day
26 period immediately following that determination, remit the
27 appropriate amount to the person, with interest at the prevailing

1 United States Department of the Treasury rate.

2 (g) Failure to forward the money to the commission within
3 the time provided by Subsection (e) of this section results in a
4 waiver of all legal rights to contest the violation or the amount
5 of the penalty.

6 (h) Civil penalties owed under this section may be recovered
7 in a civil action brought by the attorney general at the request of
8 the commission.

9 SECTION 4. Sections 26.136 and 27.1015, Water Code, and
10 Section 8A, Solid Waste Disposal Act (Article 4477-7, Vernon's
11 Texas Civil Statutes), as added by this Act, apply only to
12 violations that occur on or after September 1, 1985. Violations
13 that occur before that date are governed by the law as it existed
14 when the violations occurred and that law is continued in effect
15 for that purpose.

16 SECTION 5. This Act takes effect September 1, 1985.

17 SECTION 6. The importance of this legislation and the
18 crowded condition of the calendars in both houses create an
19 emergency and an imperative public necessity that the
20 constitutional rule requiring bills to be read on three several
21 days in each house be suspended, and this rule is hereby suspended.

H. B. No. 2060
Berlanga

By BERLANGA

A BILL TO BE ENTITLED
AN ACT

relating to administrative penalties for violation of certain laws, rules, orders, and permits of the Texas Department of Water Resources.

MAR 8 1985

MAR 18 1985

1. Filed with the Chief Clerk.

2. Read first time and Referred to Committee on

Natural Resources

3. Reported favorably (as amended) and sent to Printer at _____
(as substituted)

4. Printed and distributed at _____

5. Sent to Committee on Calendars at _____

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote)
(Record Vote of _____ yeas, _____ nays, _____ present, not voting).

7. Motion to reconsider and table the vote by which H.B. _____ was ordered
engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas,
_____ nays, and _____ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed
to suspend) by a four-fifths vote of _____ yeas, _____ nays, and _____
present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote
of _____ yeas, _____ nays, _____ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. _____ was finally passed
prevailed (failed) by a (Non-Record Vote) (Record Vote of _____ yeas, _____
nays, and _____ present, not voting).

12. Ordered Engrossed at _____

13. Engrossed.

14. Returned to Chief Clerk at _____

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on _____

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read
first time.

20. Ordered not printed.

21. Regular order of business suspended by
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION:

OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments,
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record
(Substitute) Vote) (Record Vote of _____ yeas, _____ nays, _____ present,
not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____